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OFFICE OF PETITIONS

In re Application of	:	
Vernard W. Sanders	:	DECISION ON PETITION
Application No. 10/763,091	:	UNDER 37 CFR 1.137(f)
Filed: 21 January, 2004	:	
Atty Docket No. 636-20-016	:	

This is a decision on the petition under 37 CFR 1.137(f),¹ filed on 29 November, 2004, to revive the above-identified application.

The petition is **dismissed** as inappropriate for the reasons stated below.

The record discloses that, on 21 January, 2004, the date of filing of the instant application, a Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) was filed certifying that "the invention disclosed in the attached **application has not and will not** be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication at eighteen months after filing."

On 29 November, 2004, petitioners filed a request under 35 U.S.C. § 122(b)(2)(B)(ii) that the Request and Certification Under 35 U.S.C. § 122(b)(2)(B)(i) be rescinded and the application revived because this application became abandoned for failure to notify the Office of the filing of a corresponding international or

¹ 37 CFR 1.137(f) provides for revival of a nonprovisional application which became abandoned pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing.

foreign application. The present petition was also filed on 29 November, 2004. In this regard, petitioner states that an international or foreign application corresponding to the instant application was filed on 29 November, 2004, the same date that the instant application was filed.

The instant nonprovisional application did not become abandoned as a result of the filing of a corresponding application filed in another country, or under a multilateral international agreement, **subsequent** to the filing of the present application. In this regard, 35 U.S.C. § 122(b)(2)(B)(iii) states:

An applicant who has made a request under clause (i) but who subsequently files, in a foreign country or under a multilateral international agreement specified in clause (i), an application directed to the invention disclosed in the application filed in the Patent and Trademark Office, shall notify the Director of such filing not later than 45 days after the date of the filing of such foreign or international application. A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional [emphasis supplied].

The facts of this case are that the subject application was filed on 21 January, 2004, and the corresponding foreign application was also filed on 21 January, 2004. The statute does not provide for the situation where a certification under 35 U.S.C. § 122(b)(2)(B)(i) was made, despite the fact that an application was filed on the same day in another country or under the multilateral international agreement. In view of petitioner's statement that the corresponding foreign application was filed on 21 January, 2004, the same date as the date of filing of the subject application, the filing of the corresponding foreign application cannot be considered to have been filed **subsequent** to the filing of the subject application in the United States. The statute at 35 U.S.C. § 122(b)(2)(B)(iii) only provides for revival in the situation where a certification was made under 35 U.S.C. § 122(b)(2)(B)(i) at the time of filing the application and an application was **subsequently** filed in a foreign country without notifying the Office within 45 days of the filing thereof.

Since the corresponding foreign or international application was either filed on the same date or filed prior to the filing date (this would be true if the corresponding foreign or international application has a filing date of 21 January, 2004) as the subject application, this application did not become abandoned pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii). Therefore, a petition to revive pursuant to the provisions of 37 CFR 1.137(f) is inappropriate and, consequently, must be dismissed.

As requested, the Request and Certification Under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing, stating the projected publication date of 2 June, 2005, is enclosed herewith.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition.² Accordingly, the required \$685.00 petition fee has been received.

The application is being forwarded to the Office of Initial Patent Examination for further processing.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

cc: Communication Regarding Rescission of Nonpublication Request
and/or Notice of Foreign Filing

²See 35 U.S.C. § 41(c)(7).